

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

14 January 2019

Dear Rebecca

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

The National Assembly received a notification from you in accordance with Standing Order 30C in respect of the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018 (the PBR Regulations). At our meeting on 7 January 2019, we considered the notification and in particular the following paragraph:

“These regulations confer functions on the Controller of Plant Variety Rights, an officer established by the Plant Varieties Act 1997 as the head of the Plant Variety Rights Office. The Controller acts under the direction of and is appointed by the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department acting jointly.

Functions transferred to a public authority other than a devolved Welsh authority would engage paragraph 10 of Schedule 7B to GoWA 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.”

It is very disappointing that the National Assembly was not provided with advance notice of the Welsh Government's intention to consent to the making of the PBR Regulations by the UK Government. While we accept that subordinate legislation is, in general, a matter for governments, the PBR Regulations are, as far as we are



aware, the first ever of their kind – the effect of the PBR Regulations can be summarised like this: the Welsh Government has consented to the UK Government making a negative resolution statutory instrument that restricts the legislative competence of the National Assembly for Wales, without the Assembly having any role.

Could you therefore:

- explain why you did not think it appropriate to consult the Assembly before consenting to the PBR Regulations,
- explain why the Welsh Government did not make the PBR Regulations itself (at least in so far as they impact the Assembly’s legislative competence),
- tell us how many other pieces of subordinate legislation are likely to raise the same issue, and undertake to consult the Assembly on any such subordinate legislation,
- provide details about any agreements you have entered into with the UK Government with regard to obtaining future consents under paragraph 10 of Schedule 7B to the *Government of Wales Act 2006*.

We are also drawing the matter to the attention of various UK Parliament Committees, as the Committees that will be scrutinising such subordinate legislation in the UK Parliament.

Yours sincerely



Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

